IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 4-4-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.848 of 2006

C. Nagamuthu ... Petitioner

Vs.

1. State of Tamil Nadu
rep.by Secretary to Government,
P.W.D.Department,
Fort St.George,
Chennai - 600 009.

2. Joint Secretary to Government,
PWD Department,
Fort St.George,
Chennai - 600 009.

3. Chief Engineer (Buildings),
PWD, Chepauk,
Chennai - 600 005.

4. Superintending Engineer,
PWD (Buildings Construction and Maintenance)
Palayamkottai,
Tirunelveli District.

5. Executive Engineer,
PWD, Buildings Construction and Maintenance Division,
Nagercoil,
Kanyakumari District. ... Respondents

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This writ petition has been filed under Article 226 of Constitution of India, for issuance of a writ of mandamus directing the respondents to pay a sum of Rs.60,039/- as reimbursement for medical expenses of the petitioner's son, who underwent heart surgery in the Sree Chitra Tirunal Institute for Medical Sciences & Technology, Thiruvananthapuram, Kerala State.

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For Petitioner : Mr.V.Selvaraj

For Respondents : Mrs.D.Malarvizhi,
Government Advocate

O R D E R

In this writ petition, petitioner seeks a direction to the respondents to pay a sum of Rs.60,039/- as reimbursement towards the medical expenses of the petitioner's son, who underwent heart surgery in the Sree Chitra Tirunal Institute for Medical Sciences & Technology, Thiruvananthapuram, Kerala State.

2. The brief facts necessary for disposal of the writ petition as stated in the affidavit in support of the writ petition are as follows.

(a) Petitioner joined as a Head Messenger in the Public Works Department on 3.7.1971 and retired from the service on 28.2.2005 as Works Inspector. The petitioner is a native of Muthalakurichi in Kanyakumari District. In the year 1998, while he was working as Works Inspector under the Executive Engineer, Public Works Department, Building Construction and Maintenance Division, Nagercoil, viz., the 5th respondent herein petitioner's son Saravanan suddenly fell sick and he had to undergo an urgent heart surgery during April, 1998. Petitioner's son was aged 11 years at that time and he underwent heart surgery on 2.4.1998 at Sree Chitra Tirunal Institute for Medical Science & Technology, Thiruvananthapuram, which is about 60 Kms away from the petitioner's place of residence.

(b) The 5th respondent by his proceedings dated 22.10.1998 passed an order to reimburse a sum of Rs.48,749/- to the petitioner. The said order was cancelled subsequently by the 5th respondent by proceeding dated 17.12.1998 due to the objections raised by the audit department. It is further stated that the petitioner was required to submit a petition before the Government for medical reimbursement since the hospital in which petitioner's son underwent operation is situated in Kerala State. Accordingly petitioner submitted a petition on 24.2.1998 before the third respondent along with the case summery, discharge record relating to the treatment, copy of G.O.Ms.No.739 Finance Department dated 21.9.1995, etc.

(c) Petitioner further states that by G.O.(D)Ms.40 Agriculture Department, dated 23.3.1999 the Government sanctioned a sum of Rs.49,033/- to one T.Narayani, a Junior Assistant working in the Agricultural Department, who underwent heart surgery in the

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very same hospital at Thiruvananthapuram, where petitioner's son underwent surgery. Petitioner subsequently produced the said Government order before the first respondent. According to the petitioner, respondents 3 to 5 recommended to the first respondent to consider petitioner's request for medical reimbursement. The second respondent by letter dated 7.2.2003 addressed to the third respondent stated that the medical reimbursement expenses cannot be granted since the petitioner's son underwent heart surgery in a hospital outside the State. The Government has not passed any order till date sanctioning the medical reimbursement in favour of the petitioner. Hence the writ petition is filed with the above said prayer.

3. The 5th respondent filed a counter affidavit in which it is stated that the hospital in which surgery was performed does not find a place in the approved list of hospitals and therefore the request for sanction of the medical reimbursement cannot be entertained.

4. The learned counsel appearing for the petitioner argued that the scheme for medical reimbursement was introduced to help the Government Servants and their near relatives to meet 75% of the actual amount spent or Rs.1,00,000/- whichever is less, towards medical expenses, provided the Government servant paid contribution to the Government Employees Health Fund Scheme. The petitioner having contributed to the scheme, is entitled to get reimbursement since his son underwent heart surgery and the petitioner was forced to perform heart surgery at Sree Chitra Tirunal Institute for Medical Science & Technology, Thiruvananthapuram on 2.4.1998 since his son suddenly developed the illness. According to the learned counsel, under the above circumstances, petitioner was left with no other option but to admit his son for treatment at Thiruvananthapuram, which is one of the reputed and nearby hospital for the people residing in Kanyakumari District and Thiruvananthapuram District of Kerala State. The learned counsel also argued that the said hospital gave medical certificate certifying that the petitioner's son underwent surgery of VSD Closure with Dacron patch on 2.4.1998. The learned counsel further stated that the Executive Engineer, PWD, Nagercoil, by his proceedings dated 22.10.1998 sanctioned an amount of Rs.46,749/- on the recommendations of the Joint Director of Health Services, Kanyakumari District at Nagercoil as per the Government Order as the petitioner is a regular subscriber to the Health Fund from its inception i.e, from 1991-1992 onwards. The Director of Treasuries and Accounts, Madras, was authorised to issue a crossed cheque/draft for the said amount. However, the said sanction order was cancelled without any notice to the petitioner on 17.12.1998. The learned counsel further stated that the Government by G.O.(D) No.40 dated 23.3.1999 sanctioned

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Rs.36,774/- to one T.Narayani, Junior Assistant of the Agricultural department, towards medical reimbursement, who also took treatment in the very same hospital. Therefore, according to the learned counsel for the petitioner, petitioner cannot be discriminated and prevented from getting the medical reimbursement.

5. The learned Government Advocate pointed out the statements contained in the counter and argued that the hospital in which the petitioner's son underwent treatment having not been approved in the list of hospitals, petitioner cannot be granted medical reimbursement.

6. I have considered the rival submissions of the learned counsel appearing for the petitioner as well as the learned Government Advocate.

7. As rightly contended by the learned counsel appearing for the petitioner, it is not disputed that the petitioner paid contribution towards the Health Fund from the inception i.e., from 1991-1992 onwards and therefore he is entitled to get medical assistance under the Tamil Nadu Government Employees Health Fund Scheme as ordered in G.O.Ms.No.846 dated 14.12.1993. The Joint Director of Health Services, Kanyakumari District at Nagercoil certified that the petitioner's son underwent the surgery and the petitioner spent a huge amount towards medical expenses. It is pertinent to note that the Government in G.O.(D)No.40, dated 22.3.1999, sanctioned medical reimbursement to one T.Nayarani, Junior Assistant, Office of the Joint Director of Agriculture, Nagercoil, who underwent heart surgery at Sree Chitra Tirunal Institute for Medical Science & Technology, Thiruvananthapuram, Kerala State. In paragaraph 2 of the said order it is stated that the proposal of the Director of Agriculture has been examined by the Government and since the surgery performed to T.Narayani is included in the specialised surgery/treatment, Government have decided to sanction the amount incurred by T.Narayan and accordingly Rs.36,774/-was sanctioned, even though it is stated 'as a special case' and the said amount was paid.

8. While sanctioning medical reimbursement to T.Narayani, who underwent similar operation in the very same hospital, the action of the Government in not sanctioning medical reimbursement to the petitioner towards his son's surgery, cannot be justified. The fact that the petitioner has paid contributions to the Health Fund is admitted. The treatment taken by the petitioner's son and the surgery he underwent are not also not in dispute. When both T.Narayani and petitioner's son underwent surgery in the very same hospital, the non-sanctioning of medical reimbursement to the petitioner alone is violative of Article 14 of the Constitution of

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India. As contended by the learned counsel for the petitioner, the object of the Scheme is to give financial support to the deserving persons, who contributed towards the Health Fund Scheme. Such being the object of the scheme, it is not open to the respondents to deny the benefit given under the scheme on the ground that the treatment should be taken only in the listed hospitals.

9. I have also perused G.O.Ms.No.400 Finance (Salaries) Department, dated 29.8.2000 listing the hospitals authorised to give treatment for the purpose of getting medical reimbursement. As per Schedule-II in Annexure-II to the said Government Order, the nearest hospital is 'Getwell Private Hospital, Tirunelveli', having specialisation in cardiology and there is no approved hospital in the whole of Kanyakumari District. Therefore there is every justification on the pat of the petitioner to get his son treated in the Sree Chitra Tirunal Institute for Medical Science and Technology, Thiruvananthapuram. In the absence of listed hospital in the whole of Kanyakumari District, the respondents cannot deny medical reimbursement to the petitioner on the ground that his son did not get treatment in the approved hospital as per the Government Order.

10. Viewing the matter in that angle, I hold that the action of the respondents in not sanctioning the medical reimbursement claim of the petitioner to the tune of 75% of the actual expenses incurred, cannot be considered as valid and therefore the petitioner is entitled to get a direction for sanction and payment of 75% of the actual expenses incurred by the him towards treatment of his son.

11. The writ petition is allowed with a direction to the respondents to pay the sum of Rs.48,749/- already sanctioned by the 5th respondent by his proceedings dated 22.10.1998 along with 12% interest from 17.12.1998 till the date of payment. The respondents shall pay the amount to the petitioner within a period of four weeks from the date of receipt of copy of this order. No costs.

4-4-006

vr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government, Public Works Department,
   Fort St.George, Chennai - 600 009.

2. The Joint Secretary to Government, Public Works Department,
   Fort St.George, Chennai - 600 009.

3. The Chief Engineer (Buildings), PWD, Chepauk,
   Chennai-600 005.

4. The Superintending Engineer,
   PWD (Buildings Construction and Maintenance)
   Palayamkottai, Tirunelveli District.

5. The Executive Engineer, PWD,
   Buildings Construction and Maintenance Division,
   Nagercoil, Kanyakumari District.

1 cc to Mr.V.Selvaraj, Advocate, SR.17281

ng (co)

dv/10.4.06

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